

# CITIZEN REVIEW PANEL

## Current Practices and Policies of the Washington State Liquor Control Board

### Enforcement and Education Division

**FINAL REPORT**

December 1, 1999

## CITIZEN REVIEW PANEL REPORT

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## EXECUTIVE SUMMARY

In August 1999, Governor Locke appointed a Citizen Review Panel to examine current practices and policies of the Washington State Liquor Control Board's Enforcement and Education Division, including any overlap with the agency's Licensing and Regulation Division, and to provide recommendations for improvements in systems in order to enhance public trust.

The 12 member Citizen Review Panel included management experts, citizens, and representatives of the regulated community, law enforcement, local governments, county health agencies, and labor from both eastern and western Washington.

The Review Panel met in SeaTac seven times from September 1, 1999 through December 1, 1999. In addition, two public hearing were held, one in Spokane and one in SeaTac. The panel agreed to an open process that welcomed agency, public and stakeholders input. Key to the decision making process was the need to analyze issues in a problem-solving manner, and attempt to reach consensus agreement on issues whenever possible.

The Panel found the Liquor Control Board (Agency), Board members (Board), licensees, the public and other stakeholders cooperative and helpful to their deliberations. The Liquor Enforcement Officers (LEO) and Enforcement Division staffs were open with their views, responsive and dedicated to their public safety mission.

The Panel's findings and recommendations are organized in the following seven areas:

1. Clarification of roles and responsibilities
2. Internal consistency and clarity on rules and procedures
3. Consistency and clarity in regulation of licensees
4. Staffing and training
5. Administrative Violation Notices
6. Complaints against enforcement officers
7. Clear, comprehensive, regularly reported management information

## ***Summary of Recommendations***

### **1. Clarification and Execution of Roles and Responsibilities**

Modify the organization of the Liquor Control Board to provide for a clear distinction between policy-making and policy execution and for continuity and consistency in Agency operations.

Conduct a legislative review of RCW 66.08 to provide policy and regulation authority to the Board with operational responsibility assigned to a Director.

The Board should include broader representation and clearly be of a policy-making nature.

The Director should ensure a consistent agency management philosophy; direct the development, implementation and monitoring of strategic priorities; and oversee the current

operations of the retail, licensing, enforcement, and support functions of the Agency, including hiring and firing of Agency staff.

The Panel recommends that both the Board and the Governor be involved in the process of hiring the Director with a process that maximizes continuity and focuses on management capabilities while minimizing political influence.

## **2. Internal Consistency and Clarity on Rules and Procedures**

Develop a delegation plan that clearly defines how authority is distributed across the organization – at the Board, region and enforcement officer levels. This plan should be based on a clear direction within the Agency across organizational and regional boundaries on critical issues, enforcement direction, strategies, priorities and procedures.

## **3. Consistency and Clarity in Regulation of Licensees**

Give a high priority to:

Making clear statements of Board policy concerning the areas subject to regulatory reform so that the Agency regulatory reform process can be completed in accordance with the Governor's Executive Order. Continue the up-front involvement of stakeholders in the rule making process.

Improving educational, training and other outreach materials so that they are more sensitive to learning styles, cultural differences, and language needs. This should be integrated with the efforts to modernize regulations.

Clearly defining public policy regarding safety that establishes the distinction between the types of on-premise licenses through work with the Legislature and Agency stakeholders to make revisions to RCW 66.24.410.

Seeking partnerships with local governments, law enforcement agencies, ethnic, neighborhood and community organizations and licensees to develop balanced approaches to deal with local and regional public safety issues.

Supporting adoption of mandatory training for off-premise sale of alcohol and tobacco with an associated certification process.

Adopting a service focus in the enforcement and licensing divisions guided by a philosophy of mutual accountability, partnerships, trust and respect, outcome-orientation and feedback systems that rebuild cooperative relationships with licensees and other stakeholders.

## **4. Staffing and Training**

Develop a clear set of Division-wide and Region-specific enforcement goals. Identify the important problems to be resolved to accomplish those goals, establish measures of success, actions to be taken, set clear Division and Region priorities based on available staff and take action to resolve the problems.

Consider the establishment of a specialized unit for tobacco excise tax enforcement.

Review the appropriateness of the Division organization structure and consider increasing the regional span of control.

Identify problems that could be addressed if additional staff were available and develop a proposal for required additional resources.

Establish and implement a policy requiring periodic retraining and education of Liquor Enforcement Officers based on current duties and responsibilities.

Review the effectiveness of the current Academy/Field Training Officer mandatory training programs and make necessary revisions that emphasize consistency with professional standards and clarity in operational procedures. The Agency should increase the level of involvement with the Criminal Justice Training Commission in providing for Enforcement Officer training needs.

### **Agency Processes**

The Panel analyzed in detail two Enforcement Division processes - the issuance of Administrative Violation Notices (AVN) and the resolution of complaints against employees. The Panel recommends that the Agency, in their internal review and revision of each of these critical areas, place emphasis on the following principles:

- Fair to all parties impacted by the actions
- Consistent with the principles of due process of law
- Clearly and concisely described for all parties
- Consistent in application and administration
- Penalties consistent with the mission of the Agency – preventing misuse of alcohol and tobacco
- Provides written notification and documentation of decisions to all parties
- Prohibits retaliation

### **5. Administrative Violation Notices**

Simplify the AVN process by emphasizing the role of the Enforcement Division region and headquarters leadership in execution and administration with Board review only on appeal. At a minimum, the Board should conduct AVN reviews and decide appeals as a group in open session. The Panel believes that this approach could help in communicating Board policy and in providing a more open process.

Develop evaluation criteria and monitor the effectiveness of the AVN process for both the agency and the licensees.

Promote problem solving at the lowest possible level, consideration should be given to providing support to the Agents In Charge in the informal settlement (Alternative Dispute Resolution) process.

### **6. Complaints Against Enforcement Officers**

Redesign the complaint against Agency employee process with emphasis on handling minor problems at the lowest level and on the use of trained investigators for serious complaints.

Establish a well publicized contact point (ombudsman), separate from the Enforcement Division and the Licensing Division, that licensees can call to discuss concerns, issues or complaints.

**7. Clear, Comprehensive, Regularly Reported Management Information**

Place a high priority on developing management information system report capabilities that:

Emphasize a problem solving orientation to complement the incident response orientation

Assist in establishing priorities and in management decision making

Are a tool in establishing a basis for enforcement decisions

Provide feedback on outcomes and performance

Display information at the Agency, division and region levels

Include links with state and local law enforcement information systems

Feature timely report production and database query capabilities

**Evaluation of Progress**

The Panel also recommends that the Governor and the Board reconvene a Citizen Review Panel in twelve to eighteen months to assess progress on implementation of these recommendations.

## A. INTRODUCTION

### ***Mission and objectives of the Citizen Review Panel***

In August 1999, Governor Locke appointed the Citizen Review Panel to examine current practices and policies of the Washington State Liquor Control Board's Enforcement and Education Division, including any overlap with the agency's Licensing and Regulation Division.

The assignment was to undertake a systematic review of the Enforcement Division's policies, procedures, and training program. In addition, the panel was asked to review the application of laws, rules, and policies by enforcement agents and the complaint process in place for the public and the regulated community.

The Panel was to provide recommendations to the Governor and the Board for improvements to existing policies, procedures, and the organizational structure of the Enforcement and Education Division to enhance public trust.

Throughout this report the Liquor Control Board members will be referred to as the Board; the Liquor Control Board agency as Agency; the Liquor Enforcement Officers as LEO; and the Citizen Review Panel as Panel.

### ***Panel membership***

The 12 member Citizen Review Panel included management experts, citizens, and representatives of the regulated community, law enforcement, local governments, county health agencies, and labor. Members included:

**Charles Earl**, President, Everett Community College (Panel Chair)

**The Honorable Charles Booth**, Mayor, City of Auburn

**Dr. Federico Cruz-Uribe**, MPH, Director, Tacoma-Pierce County Health

**Donald Lachman**, Donald A. Lachman & Associates

**Raymond Mason**, Welfare to Work Project Director, Washington State Labor Council

**Frank Min**, Executive Director, Korean American Grocers Association

**The Honorable Jesse Palacios**, Yakima County Commissioner

**Kris Pomianek**, Executive Director, Wenatchee Chamber of Commerce

**Mary Riveland**, Riveland Associates

**The Honorable Phil Thompson**, Office of the Corporation Council, Gonzaga University

**Gene Vosberg**, Executive Director, Restaurant Association of Washington

**Colleen Wilson**, Monroe Police Chief

Kim O'Neal, Assistant Attorney General provided legal counsel and historical insights.

Gary Hacker, Liquor Control Board, provided staff support.

The Liquor Control Board selected through a competitive process an independent facilitation contractor, Roundtable Associates. Roundtable Associates (Bob Archey, Art O'Neal and Marianna Archey) supported the panel through preparing for and facilitating meetings; review of the application of laws, rules, and policies, processes of the enforcement division; data gathering, etc; developing background materials; and documenting the Review Panel meetings and work products.

While the Liquor Control Board played a supporting role as staff and convener to the Panel, it did not hold a seat at the table. The Panel wishes to acknowledge cooperation received at all levels of the Agency.

### ***Meeting structure and decision making process***

The Citizen's Review Panel began its work on September 1, 1999. Members received brief overviews of the Liquor Control Board and guiding statutes, the Enforcement and Education Division and the Licensing and Regulation Division.

The Review Panel met seven times from September through December 1999. Meetings were held at SeaTac. In addition two public hearing were held in Spokane and at SeaTac. The panel agreed to an open process that welcomed agency, public and stakeholders input and they selected the Chair as the single spokesman for the Panel. Key to the decision making process was the need to analyze issues in a problem-solving manner, and attempt to reach consensus agreement on issues whenever possible.

The Panel reviewed the application of laws, studied enforcement rules and policies, and looked at the complaint process in place for the public and the regulated community. The work plan and schedule of the Citizen Review Panel is outlined in Appendix D.2.a. The individuals and organizations interviewed by the consultants and/or panel members are listed in Appendix D.2.b.

The information gathering included:

- A session with representatives of the Enforcement Division's headquarters personnel, Region 1 enforcement officers and the Licensing Division to identify the primary enforcement processes, the primary licensing processes and their interdependencies and interfaces.

- Sessions in six Enforcement and Education regions to engage regional enforcement personnel in identification of issues, analysis and problem solving

- Interviews with agents-in-charge and key managers at Olympia Headquarters including the three board members

- Interviews with other agencies and associations representing licensees and county and local government

- Two public hearings

- An Internet web site that included opportunity for input to the Panel as well as information on Panel progress.

As a result of the analysis of the data from these interviews, public hearings and reviews of documents, the Panel prepared a set of findings and developed and reached consensus on recommendations.



## **B. BACKGROUND**

### ***Control of liquor and tobacco In Washington***

Washington State's strict liquor control system is the result of deliberate actions taken by legislators after a long and bitter struggle throughout the history of Washington. Shortly after liquor control was returned to the states, legislators adopted the Washington State Liquor Control Act (the Steele Act) in 1933. The stated primary objective of the liquor control laws is to maintain direct control over the manufacture and distribution of alcoholic beverages by state government in a manner that will protect the health and safety of the general public. The Steele Act created a three-member Liquor Control Board appointed by the governor for a nine-year term and authorized state owned and operated retail stores for all liquor beverages over four percent alcohol content. Restaurants, stores and dispensaries could get licenses for the sale of beer and wine. The act represented a compromise between complete prohibition and unregulated repeal.

People were generally happy with the new state liquor laws and made no significant efforts to modify the Steele Act until after World War II. Hard liquor by the drink was adopted by Initiative in 1948, and no major changes to the state's liquor control system have been made since that time. The responsibilities of the Board today are much the same as in 1948, and include the wholesale and retail distribution of all spirituous liquor and fortified wine. The Board licenses and regulates all alcohol beverage sales and activities, as well as the sale of tobacco.

A study by the governor's office in 1983 stated, "There has been little general public interest in liquor issues since 1948 except by the special interests involved." A number of attempts at initiatives regarding privatizing liquor sales and reducing the legal age "were never filed or lacked the required number of signatures. Strongly enforced state operated liquor control is in place and there does not seem to be enough public interest to accomplish major changes to a system that is working."

"Drunk driving, youth alcoholism, and health problems associated with alcohol consumption are issues that are of significant concern to the general public at this time."

### ***Current environment***

What was true in 1983 is much the same in 1999. However, over the past ten years, the Washington State Liquor Control Board has experienced significant community and social pressures. The Board's inability to respond effectively to these pressures are in large measure responsible for bringing the Agency to the point where it is today: lacking clear direction, confused over priorities, with low agency morale, and failing to meet community expectations. Understanding these pressures is an important factor in identifying and implementing solutions to the problems being experienced within the Enforcement Division. Key factors that help to define the environment in which the Agency currently carries out its mission include:

- Demands for regulatory reform
- Public pressure to address public inebriation and the underage consumption of alcohol
- Emergence of tobacco as a major public health issue
- Changing expectations of law enforcement
- Increased turnover in Liquor Control Board members
- Introduction of legislation to reorganize the Liquor Control Board

### **Demands for regulatory reform**

The public has demanded that government carry out its primary duties of governance but decrease its intrusions into the details of people's lives and businesses. Businesses licensed by the Liquor Control Board increasingly expect to conduct their businesses in ways they see fit, providing they are not selling alcohol or tobacco to underage people or providing alcohol to intoxicated individuals. This attitude frequently conflicts with the detailed requirements for various kinds of retail establishments put in place for the most part in the 1930's to negate the possibilities of organized crime controlling both the production and direct sales of alcoholic beverages.

In September of 1997, Governor Locke issued Executive Order (EO 97-02) directing state agencies to conduct a review of its current rules. The Executive Order states the agency will examine the need for each rule, their effectiveness, efficiency, clarity, intent, statutory authority, cost benefit, and fairness. The Governor further directed agencies to amend or repeal those rules or sections that do not meet these criteria.

Rule revisions have been slow to get underway in the Liquor Control Board. Meanwhile, the Enforcement Division continues to enforce these detailed requirements much as they have for the last 65 years.

### **Public pressure to address public inebriation and the underage consumption of alcohol**

Efforts to deal with juvenile crime, substance abuse and other public safety issues have increased awareness of the link that public safety has with underage drinking and overservice of intoxicated individuals.

The public and most licensees strongly support efforts to control the sale and use of alcohol. The difficulties arise over how these objectives are best accomplished. Experience of Liquor Enforcement Officers indicates that compliance checks or stings are the most effective technique. However, they result in very contentious relationships between the Liquor Enforcement Officers and many licensees. There may be resolvable differences about the techniques of conducting compliance checks and appropriate sanctions for those individuals and licensees not in compliance.

However, there can be little doubt that the public demands strict enforcement and a continuing reduction of sales to minors and the intoxicated. Local governments, communities and neighborhoods desire the Agency to join them in partnerships to seek solutions to these public safety issues including the availability of specific alcoholic products. Because these products are typically distributed through convenience and neighborhood grocery stores, tension is often created between the Agency and the storeowners involved. Because many of these stores have minority owners, the Agency's actions may be viewed as discriminatory and racially motivated.

### **Emergence of tobacco as a major public health issue**

In the past five years the use of tobacco has become a major public health issue. Regulations restricting the access to tobacco have been strengthened. In 1994, the Agency was charged with the enforcement of the laws regarding sales of tobacco products to minors. In 1998, tobacco excise tax enforcement was reassigned from the Department of Revenue to the Liquor Control Board adding another important responsibility: investigating possible violators, seizing their vehicles and building cases for prosecution of transporters of untaxed tobacco products.

The assumption of the tobacco responsibilities has resulted in changing priorities and in less time available to work with licensees on liquor issues and to develop constructive relationships with the growing number of licensees.

### **Changing expectations of law enforcement**

Across the country, law enforcement agencies have been adopting community involvement techniques, e.g. community-oriented policing, in which problems are dealt with in a holistic manner, partnering with other social, educational, and community organizations to treat the underlying issues causing the problems. Liquor Enforcement Officers are expected to be much more than mere enforcers of detailed licensing regulations but rather to become facilitators in solving community problems. Many enforcement officers are left confused about how to reconcile these desires for prevention and community involvement with their traditional mandate to enforce the highly detailed liquor laws.

### **Increased turnover in Liquor Control Board members**

The average tenure of Board members during the 1970s and 1980s was approximately 9 years, ranging from 7 to 15. During the 1990s, the average is approximately 2.8 years, ranging from 1 to 6. This increased rate of turnover has resulted in more frequent changes in direction by Board members and created confusion over direction and priorities.

### **Introduction of legislation to reorganize the Liquor Control Board**

During the 1999 Legislative Session, there was widespread agreement that the way liquor is controlled in Washington should be changed. Many interests agreed that the current structure should be reorganized. Several bills were introduced (SB 6003, HB 2218) to reorganize the Agency. The bills provided for renaming the agency the Washington State Department of Liquor Control, creating the position of an executive director to be appointed by the Governor and transferring many of the powers, duties, and functions of the Board to the director of the department.

Although many interests agreed that the Board and Agency should be restructured, public testimony at house committee hearings and complaints by state legislators focused on problems within the enforcement division of the Agency, raising accusations of inappropriate practices. The Agency became the object of unfavorable press, resulting in a lack of public trust. In response, the Board recommended an independent review of its enforcement and licensing procedures and the structure of both the Enforcement and Licensing Divisions and in September the Citizen Review Panel was convened.

All of these pressures have created a need for change in numerous aspects of the Agency and the Enforcement Division's organizational structure, operating procedures and decision-making processes. This report is an attempt by the Citizens Review Panel to give some direction to where and how these changes might best be made.

## **C. CITIZEN REVIEW PANEL FINDINGS AND RECOMMENDATIONS**

The Panel found the Liquor Control Board (Agency), Board members (Board), licensees, the public and other stakeholders cooperative and helpful to their deliberations. The Liquor Enforcement Officers (LEO) and Enforcement Division staffs were open with their views, responsive and dedicated to their public safety mission.

Liquor Enforcement Officers make an effort to build relationships and do the enforcement job. Code revision is in progress and licensees are being involved in the front end of the process. The Agency is making efforts to communicate, educate and introspectively look at solutions to problems and attempting to respond to the increased national visibility of issues concerning tobacco and alcohol.

There is an active effort to improve processes within the agency, e.g. first offender Administrative Violation Notice and procedure manuals. There is awareness of the importance of additional training and education on the part of both the Agency and licensees. A committee is currently reviewing the LEO training as provided through the Agency Academy and the Field Training Officers.

The Agency is developing cooperative relationships with local law enforcement and other community agencies. Their work with specific groups/communities has had a positive impact on goals, has resulted in positive change and is responding to cultural needs.

The Panel encouraged public input to its deliberations through 12 hours of public hearings (Spokane and Seattle areas), press releases and an Internet site for information and public comment. The Panel received 49 responses from this public input effort – 21 from Agency personnel, 19 from licensees or their associations, 7 from community representatives, 1 law enforcement agency and 1 anonymous. Much of this testimony repeated that which had already been reported in previous legislative hearings, Board hearings and the press.

The Panel's findings and recommendations are organized in the following seven areas:

1. Clarification of roles and responsibilities
2. Internal consistency and clarity on rules and procedures
3. Consistency and clarity in regulation of licensees
4. Staffing and training
5. Administrative Violation Notices
6. Complaints against enforcement officers
7. Clear, comprehensive, regularly reported management information

The Panel recommends that the Governor and the Board reconvene a Citizen Review Panel in twelve to eighteen months to assess progress on implementation of these recommendations.

**1. *Clarification and Execution of Roles and Responsibilities***

The mission of the Washington State Liquor Control Board is “to serve the public by preventing misuse of alcohol and tobacco through education, enforcement, and controlled distribution”. RCW Chapter 66.08 prescribes the organization and authority of the Board. It consists of three independent Board members (Board) charged with a broad range of authority to make and enforce policies and regulations regarding the sale and use of liquor and tobacco. The Board is required to fulfill diverse and often conflicting roles serving simultaneously to:

- Make and execute policy;

  - Regulate;

  - Grant licenses;

  - Provide advice and training;

  - Enforce the regulations;

  - Administer penalties for violations;

  - Act as the final point of administrative appeal;

  - While at the same time they sell for profit the primary product (alcohol) that they regulate, license and enforce.

This Board organization has policy-making, execution and adjudication functions. The fact that it is without a director position makes it unique in state government. (Appendix D.1.a and D.1.b)

The staff of the Agency reports directly to the Board with no one clearly accountable for overall execution of Board policy. To effectively carry out this challenging mission, the Agency leadership must clearly communicate its vision, values, mission, strategies, and desired outcomes. Clarity of direction is critical in the changing environment in which the Board and the Agency currently operates.

At present, there appears to be confusion at the top concerning the mixed policy and administrative roles of the Board. Each Board member is perceived to interpret his roles according to his own beliefs, values and priorities. They often struggle with reaching consensus and communicating as one voice within the organization and to their external stakeholders, licensees and consumers. This has been made more difficult with the rapid turnover in Board members. While this occurs in many board-directed organizations, the unique organization of the Liquor Control Board does not provide for an interpreter of the positions that the Board takes in its policy role to assure appropriate and consistent implementation. In recent years, the Board has attempted to make liquor and tobacco policy as well as manage its execution.

### ***Panel Recommendations***

The Citizen Review Panel recommends that the organization of the Liquor Control Board be modified to provide for a clear distinction between policy-making and policy execution and for continuity and consistency in Agency operations. The Panel is aware that the Board, at the request of the Governor, is developing a proposed rule that would establish the position of Administrative Director within the agency and is in the process of recruiting and hiring an Administrative Director. The Panel strongly supports the creation of a lead position in the form of an administrative or executive director and recommends that the position be given the necessary powers, duties, and functions including hiring and firing of Agency staff. The Director should ensure a consistent agency management philosophy; direct the development, implementation and monitoring of strategic priorities; and oversee the current operations of the retail, licensing, enforcement, and support functions of the Agency.

However, the actual structure of the Board appears to be contributing to the lack of consistency. The Panel recommends that there be a legislative review of RCW 66.08 to provide policy and regulation authority to the Board with operational responsibility assigned to a Director. The review should:

Place emphasis on assuring continuity and consistency in the making and execution of policy and regulations concerning sale and use of liquor and tobacco

Include a careful evaluation of the procedures concerning the hiring and firing of the Director.

In addition,

The Board should include broader representation and clearly be of a policy-making nature.

The Director should be hired based on qualifications, capabilities and demonstrated performance consistent with the responsibilities outlined above.

The Panel recommends that both the Board and the Governor be involved in the process of hiring the Director with a process that maximizes continuity and focuses on management capabilities while minimizing political influence.

## ***2. Internal Consistency and Clarity on Rules and Procedures***

The theme of inconsistency was heard often during the presentations, interviews, hearings, meetings with Enforcement Division staff and Liquor Enforcement Officers (LEOs). The lack of clarity in Board roles appears to contribute to this sense of inconsistency. An equal contributor to this inconsistency is poor top to bottom communication of enforcement strategies and priorities; lack of clarity regarding how decisions are made and; once made, how the organization is informed, authority delegated, and outcomes evaluated.

Seven regions within the enforcement division are assigned the responsibility for assuring compliance with liquor and tobacco regulations. The regions are perceived to act as independent agencies with their own priorities, interpretation of regulations, and operational procedures. Enforcement officers state that retraining in procedures is needed when one moves from region to region. (Appendix D.1.c)

The basic regulations and corresponding procedures, which the officers must enforce, are published in three large volumes and are subject to frequent change. The documentation and update process, which requires enforcement officers to constantly keep themselves informed and replace updated pages, is cumbersome and ineffective. This results in inconsistent knowledge and application of current procedures.

The extent of a Liquor Enforcement Officer's discretion to make criminal arrests and handle the related situations and circumstances has a wide range of interpretations. These appear to be driven by an individual officer's beliefs about the LEO's role. The differences in interpretation are also reflected in the varied approach to carrying weapons, the status of the LEO within the benefit and retirement systems, and in the significant disagreements about the value of prevention versus enforcement.

### ***Panel Recommendations***

The Panel recommends that the Agency develop a delegation plan that clearly defines how authority is distributed across the organization – at the Board, region and enforcement officer levels. This plan should be based on a clear direction within the Agency across organizational and regional boundaries on critical issues, enforcement direction, strategies, priorities and procedures.

The plan should feature:

Clear standards for enforcement and understanding of the areas where statewide consistency is imperative and those where region and officer discretion may be used to reach the public safety goals.

Clear definition of the responsibilities, authority and duties of the LEO and the tools, support and training necessary to carry them out.

A means to disseminate information in an efficient and effective manner necessary for timely and consistent enforcement of liquor and tobacco regulations. Division staff and LEOs should be involved in the simplification and widespread, easy access to the information contained in the Enforcement Manuals. This should include working checklists that provide pertinent enforcement information to the officer in the field.

### ***3. Consistency and Clarity in Regulation of Licensees***

The theme of inconsistency is also present in the Agency's interactions with their stakeholders and licensees. Much of this is driven by varied perception and interpretation of the regulations and procedures both by agency representatives and by licensees, servers, and clerks.

Licensees are concerned about the appropriateness and the detailed prescriptive nature of many laws and regulations in today's business environment. They request that an Agency philosophy and framework be developed and widely disseminated to help them understand Board decisions regarding both enforcement and licensing. The current Agency efforts to revise Washington Administrative Code (WAC) with involvement of licensees and their associations early in the process have been well received.

The WAC covering the sale and consumption of alcohol and tobacco contains a significant level of detail in a number of areas - e.g. definition of food entrees, lighting, and kitchen equipment. This detail is driven by statute, history, and the need to have specific regulations to guide both the agency and the public in licensing and enforcement of the sale and consumption of alcohol and tobacco. A primary area of disagreement relates to lack of clear definition of a dividing line between a bona fide restaurant (as defined in RCW 66.24.410) and a tavern. The absence of a clear legislative policy has resulted in considerable detail in WAC and a perception of over-regulation and unfairness among licensees.

Licensees also ask that a fair assignment be made regarding individual responsibility for behavior - licensee, server, clerk, patron, and minor. They see the focus always on the licensee and although they do everything within their power to assure that employees are trained and premises posted, the licensee is penalized for all violations through fines or license suspensions while the server or clerk gets a lesser penalty and the patron or minor seldom receive any sanctions. Agency representatives testified that the offending patrons or minors do receive criminal violation tickets.

Mandatory Server Training (MAST) was included in RCW 66.20.310 in 1997 for on-premise sales of alcohol and is perceived as helpful in increasing server education, awareness of liquor and tobacco laws, and sense of personal responsibility for compliance. Participants receive server permits on successful completion of training. These permits can be suspended for service violations. Over 120,000 server permits have been granted. Training is not mandatory for off-premise sale licensees or their employees. Their awareness of laws and sense of personal responsibility for compliance does not appear to be at as high a level as that of the server. The Agency provides training, but attendance by off-premise licensees and their employees is often low.

Regulations and procedures are communicated through Agency enforcement manuals and in a variety of regulatory and educational materials developed for the public, licensees, servers, and clerks. Enforcement Manuals, as mentioned above, are difficult to access for information. Despite efforts to meet the needs of different ethnic groups, the Agency is still often seen as non-responsive to cultural and language needs by these groups.

The increasing number of licensees over the years and the addition of duties regarding tobacco sale and tax enforcement with little increase in the number of enforcement agents has limited the time for development of relationships between enforcement agents and licensees. The reduction in the LEO's involvement in the license investigation process has also lessened the LEO's educational and advisory role with licensees. Centralization of licensing in Olympia has further impaired opportunities for communication between the Agency and the licensees. Licensee contact with the Enforcement Division in 1999 is likely to be the result of a violation and is often adversarial.



***Panel Recommendations***

The Panel recommends that the Board give a high priority to:

- Clear public articulation of its policies on the sale and use of alcohol and tobacco
- Consistency across the Agency in application of alcohol and tobacco regulations and Agency procedures
- Restoration of a cooperative relationship and sense of mutual accountability with stakeholders and licensees

This should be accomplished specifically through:

Making clear statements of Board policy concerning the areas subject to regulatory reform so that the Agency regulatory reform process can be completed in accordance with the Governor's Executive Order. Continue the up-front involvement of stakeholders in the rule making process.

Improving educational, training and other outreach materials so that they are more sensitive to learning styles, cultural differences, and language needs. This should be integrated with the efforts to modernize regulations.

Clearly defining public policy regarding safety that establishes the distinction between the types of on-premise licenses through work with the Legislature and Agency stakeholders to make revisions to RCW 66.24.410.

Seeking partnerships with local governments, law enforcement agencies, ethnic, neighborhood and community organizations and licensees to develop balanced approaches to deal with local and regional public safety issues.

Supporting adoption of mandatory training for off-premise sale of alcohol and tobacco with an associated certification process.

Adopting a service focus in the enforcement and licensing divisions guided by a philosophy of mutual accountability, partnerships, trust and respect, outcome-orientation and feedback systems that rebuild cooperative relationships with licensees and other stakeholders.

***4. Staffing and Training***

There are many barriers that appear to inhibit the Liquor Enforcement Officer's ability to respond to the duties assigned. There is a wide spread belief that staffing ratios for the enforcement division are inadequate for the increased enforcement responsibilities.

Between 1989 and 1999 the number of liquor licensees increased by 9 percent from 10,205 to 11,126. In 1994, the responsibility for enforcement of underage tobacco consumption was added to the Agency responsibilities. Tobacco excise tax enforcement was added in 1998. Seventy liquor enforcement officers were responsible for liquor law enforcement in 1989. That number has remained almost constant until 1998. (Appendix D.1.d)

In 1998, 21 commissioned officers were added to the Enforcement Division staff for tobacco enforcement bringing the commissioned total to 88. Also in 1998, from within this commissioned staff, 14 Senior LEOs were appointed supervisors to assist in training and management of the field operations. The span of control decreased from 5 officers per manager/supervisor in 1997 to 4 in 1998. In 1999 the responsibility for license renewal recommendations was removed from the Enforcement Division. This action did not impact the Division's workload.

As additional responsibilities and functions have been added to the Enforcement Division, the Enforcement Officers remain "generalists." Each officer is required to work all functions. Tobacco excise tax enforcement involves, in addition to lengthy investigations and stakeouts, highway stops of suspected violators and a higher level of training. The Division's approach is to send a key person from each region to specialized training and use them as instructors to other regional enforcement personnel. (Appendix D.1.e)

The Liquor Control Board provides mandatory basic training for enforcement officers through the Criminal Justice Training Commission and the Agency Academy. The primary training in enforcement procedures is the personal responsibility of the Regional Field Training Officer and subject to regional and personal interpretation of procedures and priorities and workload considerations. Enforcement Officers are not required to attend periodic training updates. Additional LEO discretionary training is severely restricted by budget limitations.

### ***Panel Recommendations***

The Panel acknowledges the need for additional Liquor Enforcement Officer resources in the field. Before additional FTE are added to the Division, however, a number of actions should be taken.

Develop a clear set of Division-wide and Region-specific enforcement goals. Identify the important problems to be resolved to accomplish those goals, establish measures of success, actions to be taken, set clear Division and Region priorities based on available staff and take action to resolve the problems.

Consider the establishment of a specialized unit for tobacco excise tax enforcement.

Review the appropriateness of the Division organization structure and consider increasing the regional span of control.

Identify problems that could be addressed if additional staff were available and develop a proposal for required additional resources.

Training/Education of enforcement officers must coincide with the duties that officers are being asked to do.

Establish and implement a policy requiring periodic retraining and education of Liquor Enforcement Officers based on current duties and responsibilities.

Review the effectiveness of the current Academy/Field Training Officer mandatory training programs and make necessary revisions that emphasize consistency with professional standards and clarity in operational procedures. The Agency should increase the level of involvement with the Criminal Justice Training Commission in providing for Enforcement Officer training needs.

### ***Agency Processes***

The Panel analyzed in detail two Enforcement Division processes that represent the major areas of Panel review. These are the issuance of Administrative Violation Notices (AVN) and the resolution of complaints against employees. The findings and recommendations regarding each process are presented in sections 5 and 6 below. The Panel recommends that the Agency, in their internal review and revision of each of these critical areas, place emphasis on the following principles:

- Fair to all parties impacted by the actions
- Consistent with the principles of due process of law
- Clearly and concisely described for all parties
- Consistent in application and administration
- Penalties consistent with the mission of the Agency, i.e. preventing misuse of alcohol and tobacco
- Provides written notification and documentation of decisions to all parties
- Prohibits retaliation

### ***5. Administrative Violation Notices***

When a licensee, server or clerk is in violation of a liquor or tobacco regulation, an Administrative Violation Notice (AVN) is issued by the Enforcement Officer. In recent years, the Agency has placed emphasis on reducing the access to alcohol by underage persons. (Appendix D.1.f and D.1.g)

- In 1998 of approximately 1,100 violations, 66% were for allowing minors to buy or consume alcohol or frequent the premise where alcohol was sold.
- In 1999 to date the percentage has risen to 68%.
- In 1994 these categories accounted for only 35% of the violations.

Other violation categories (in the top 10) in 1998 include:

- |   |      |
|---|------|
| - Allowing intoxicated person to consume    | 7.4% |
| - Sale to apparently intoxicated person     | 3.5% |
| - After-hours sales/service                 | 2.7% |
| - Unauthorized activities/alterations       | 2.2% |
| - Conduct (disorderly/lewd/other)           | 1.7% |
| - Prohibited practices                      | 1.6% |
| - Food service refused/unavailable          | 1.1% |
| - Licensee/employee intoxicated on-premises | 1.0% |

Prior to October 1999 the AVN process was the same for all violations, including first offense. The Region recommends penalties with review in Olympia and approval of two of the three Board members is required. A licensee charged with a violation can either request a settlement conference with the Agent in Charge of their region or can request an administrative hearing before an Administrative Law Judge, with an opportunity for appeal to the Board. The process consumes time and resources for both the Agency and the licensee. An AVN generally takes from 30 to 90 days from violation to issuance of charges (Notice of Board Action). The bulk of the delay is with the Board in Olympia. (Appendix D.1.h and D.1.i)

In October of 1999, a modified AVN process was initiated for first time violators that can be handled entirely within the Region using standard guidelines and eliminating many steps and months from the process. No evaluation was possible of the effectiveness of this new process, however, the Panel considers this a positive step toward simplifying the AVN process. Appendix D.1.j)

Proposed charges and penalties are generally routed from Board member to Board member for approval or revision. Two votes are required for approval.

With respect to the process prior to October 1999, there is a belief that the system could be manipulated; that the Board members may have too much influence; and that there is little opportunity, until appeals, for a licensee to be heard by the Board. The process appears to be a closed loop within the Agency encompassing enforcement, penalties, review and appeal. While this may be true for most agencies, it is common for the head of the agency to review proposed charges and penalties. In the case of the Liquor Control Board, the Board carries out this review responsibility.

The Regional Agents In Charge (AIC) acknowledge that the informal hearings (ADR) process has saved Agency resources by reducing the number of hearings but has added work for AICs. They must now deal with licensee's attorneys, preparation time, cancellation of scheduled meetings and other activities that consume their time. In addition, it is hard to maintain consistency between regions. They estimate that 70% of the cases that reach settlement end up with no actual meeting occurring.

### ***Panel Recommendations***

The Panel supports the implementation of the revised AVN process for first time violators and recommends that the Agency develop evaluation criteria and monitor the effectiveness of the process for both the agency and the licensees.

The Panel also recommends that the process for all other AVN's be simplified as follows (Appendix D.1.k):

1. AVN is prepared and served in region and sent to Enforcement Division staff (Assistant Chief) where the penalty is set.
2. Staff forwards AVN to the Attorney General for review of probable cause
3. Upon AG review, the Enforcement Division Chief issues Notice of Board (Agency) Action to region and licensee

4. Licensee accepts penalty or requests informal regional meeting or hearing with an Administrative Law Judge
5. Board reviews only if appealed subsequent to hearing

At a minimum, the Board should decide appeals in open session. The Panel believes that this approach could help in communicating Board policy and in providing a more open process.

The panel also recommends that to promote problem solving at the lowest possible level, consideration be given to providing support to the Agents In Charge in the informal settlement (Alternative Dispute Resolution) process.

## **6. Complaints Against Enforcement Officers**

Public testimony at 1999 House committee hearings and complaints by state legislators focused on problems within the enforcement division of the Agency, resulting in accusations of inappropriate practices. The Panel heard some of the same complaints during the Public Hearings and through the consultant's interviews. However, it should be noted that significant testimony at the Hearings was complementary to the Agency and the Enforcement Officers.

Complaint areas included inconsistency, inordinate attention to minor details, aggressiveness, rudeness, lack of cultural sensitivity, inappropriateness and unfairness of penalties, complex and hard to understand processes, stings, targeting of particular licensees or geographic areas, and political motives.

The Enforcement Officers feel that in recent years the Agency process to handle complaints against LEO's is not timely, unfair and presumes guilt until innocence is proven. Enforcement Officers feel that there is little differentiation between relatively minor complaints (the secretary was rude) to more serious situations. Licensees report that they do not understand the complaint process and find it intimidating. There is a fear of retaliation on the part of both the enforcement officers and the licensees. (Appendix D.1.1)

This complaint process is located totally within the Enforcement Division with AICs acting as investigators and the Board as judge. There is reluctance on the part of the employee or licensee to tell all to an employee of the Agency.

Complaint information is not available that can be used to analyze trends and identify real problems that require action.

### ***Panel Recommendations***

A number the inappropriate practices were reported to the Panel. It was difficult for the Panel to assess the volume and nature of the complaints since little data was available. The Panel believes that many of these complaints against the Agency and its enforcement officers reflect an increase of tensions with the licensee community and is the result of a combination of the challenges of the current environment, the need for clarity and modernization of rules and procedures, and consistency in the regulation of licensees and allocation of resources. Agency resources and time devoted to build officer-licensee relationships have all but disappeared in the past 5 years. This appears to have caused the relationship to move from cooperative to adversarial.

The complaint against Agency employee process should be completely redesigned with emphasis on handling minor problems at the lowest level and on the use of trained investigators for serious complaints. It should emphasize:

- Fairness and timeliness for all involved parties internal and external to the Agency
- Requirement to investigate all complaints against the Agency or its employees
- Recording, registering, supervising and controlling the investigation of complaints to include tracking and availability of status
- Maintaining the confidentiality of the investigation and records
- Specification of the categories of complaints that require formal investigation
- Designation of a position or individual within the Agency responsible for the investigative function with the authority to report to the Agency's chief executive officer
- Clear communication of the complaint process to all personnel and other involved parties such as licensees
- Notification to the employee that he/she has become the subject of and investigation including written statement of the allegations and the employee rights and responsibilities
- Notification
- Maintenance of a record of all complaints against the agency or its employees including management data to guide training and corrective actions
- Penalties for reprisals or retaliatory action.

The Agency should establish a well publicized contact point (ombudsman), separate from the Enforcement Division and the Licensing Division, that licensees can call to discuss concerns, issues or complaints.

## **7. Clear, Comprehensive, Regularly Reported Management Information**

A vital part of the process of problem identification is the availability of easily accessible reports to indicate trends, identify obstacles, verify stories, check assumptions, uncover related and/or recurring incidents and build supporting cases.

The Enforcement Division's data and reporting systems are oriented around incidents or violations rather than problems or risks. For example, reports on the number of incidents of a particular type were readily available but it was difficult to find reports organized on the basis of incidents over a period of time or on a demographic basis. It is easy to determine when a specific AVN was issued, was sent to headquarters, came back from the Attorney General, etc. but difficult to find determine the average time AVN's spent in the Board process by type of violation.

### ***Panel Recommendations***

The Agency should place a high priority on developing management information system report capabilities that:

- Emphasize a problem solving orientation to complement the incident response orientation.
- Assist in establishing priorities and in management decision making
- Are a tool in establishing a basis for enforcement decisions
- Provide feedback on outcomes and performance

Display information at the Agency, division and region levels

Include links with state and local law enforcement information systems

Feature timely report production and database query capabilities

Types of report might include:

Violation trends by type of violation, by licensee category, by region (rural/urban), by time period (e.g. month, time of day)

AVN trends by type of violation, by licensee category, by region, by length of time from incident to resolution, process times in key parts of the process, (e.g. incident to issuance, issuance to Notice of Agency Action, Notice to final disposition)

Workload trends by region, by office, by function (e.g. supervisor, enforcement officer) by category (e.g. alcohol, tobacco, tax enforcement), by time period (months, shifts, etc.) by type activity (e.g. inspection, education, sting, serving notice, training, etc.)

Complaint trends by source, by region, by type, by time periods, by resolution

## **D. APPENDIX**

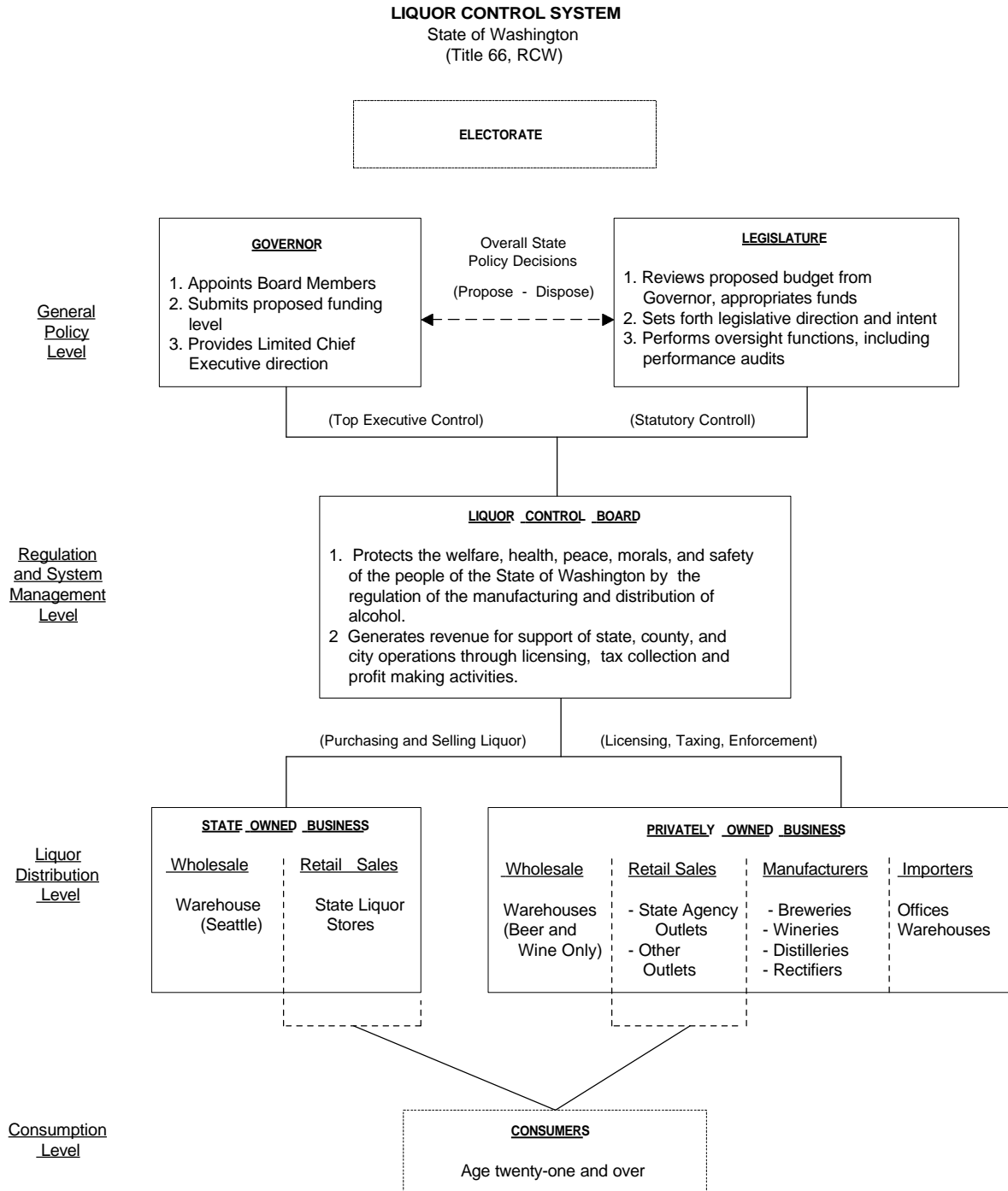
### **1. *Charts and Graphs***

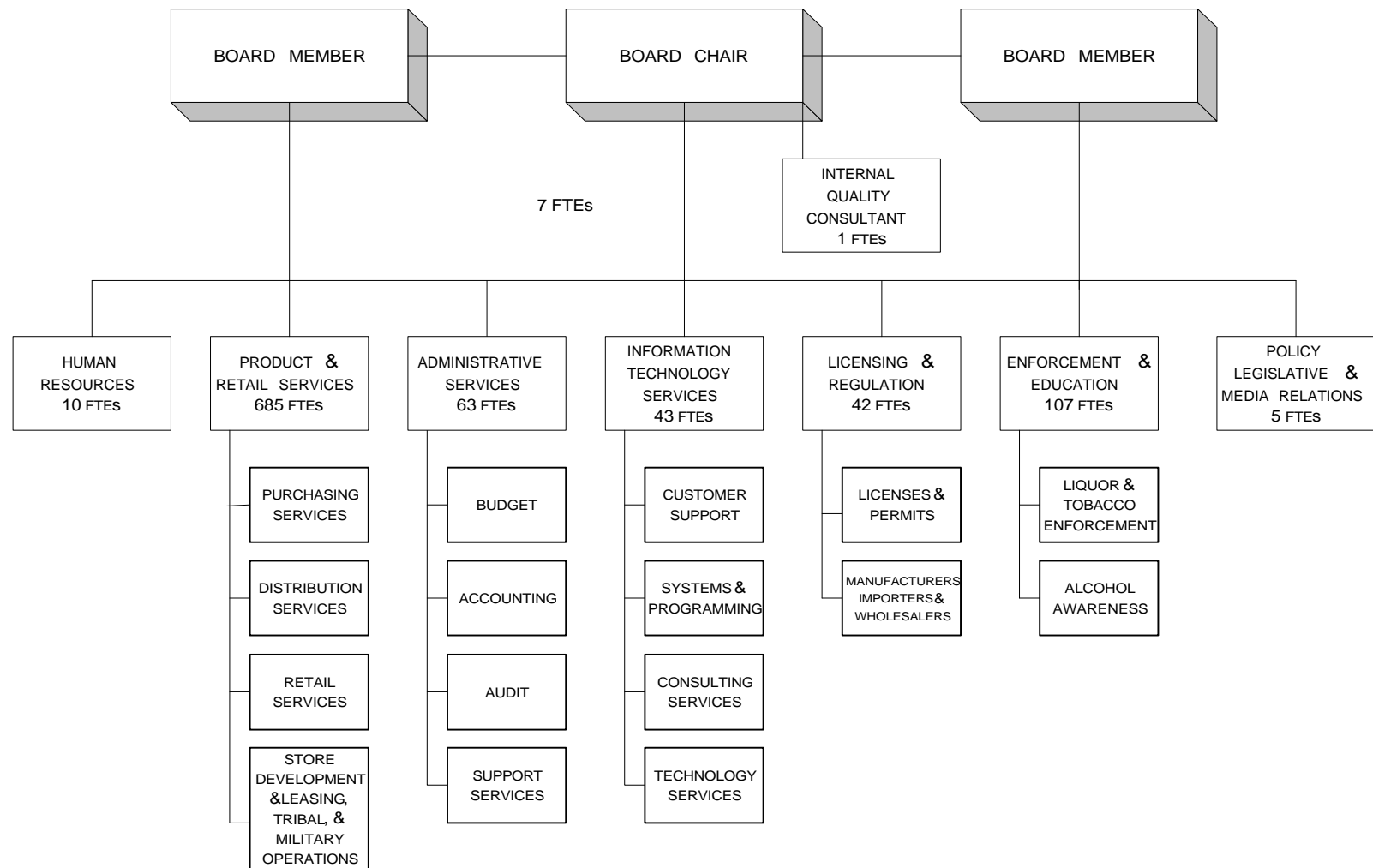
- 1.a Chart – Liquor Control System
- 1.b Organization chart – Liquor Control Board
- 1.c Organization chart – LCB Enforcement Division
- 1.d Bar chart – Enforcement Division staff/licensee
- 1.e Bar chart – Enforcement Division span of control
- 1.f Bar chart – Violations – top ten
- 1.g Bar chart – Violations – top 4
- 1.h Flowchart – AVN process (other than first offense)
- 1.i Flowchart – Hearings/Appeals
- 1.j Flowchart – AVN process (first offense – 10/99)
- 1.k Flowchart – AVN proposed process (other than first offense)
- 1.l Flowchart – Complaint against employee process

### **2. *Workplan - Interviews and Research***

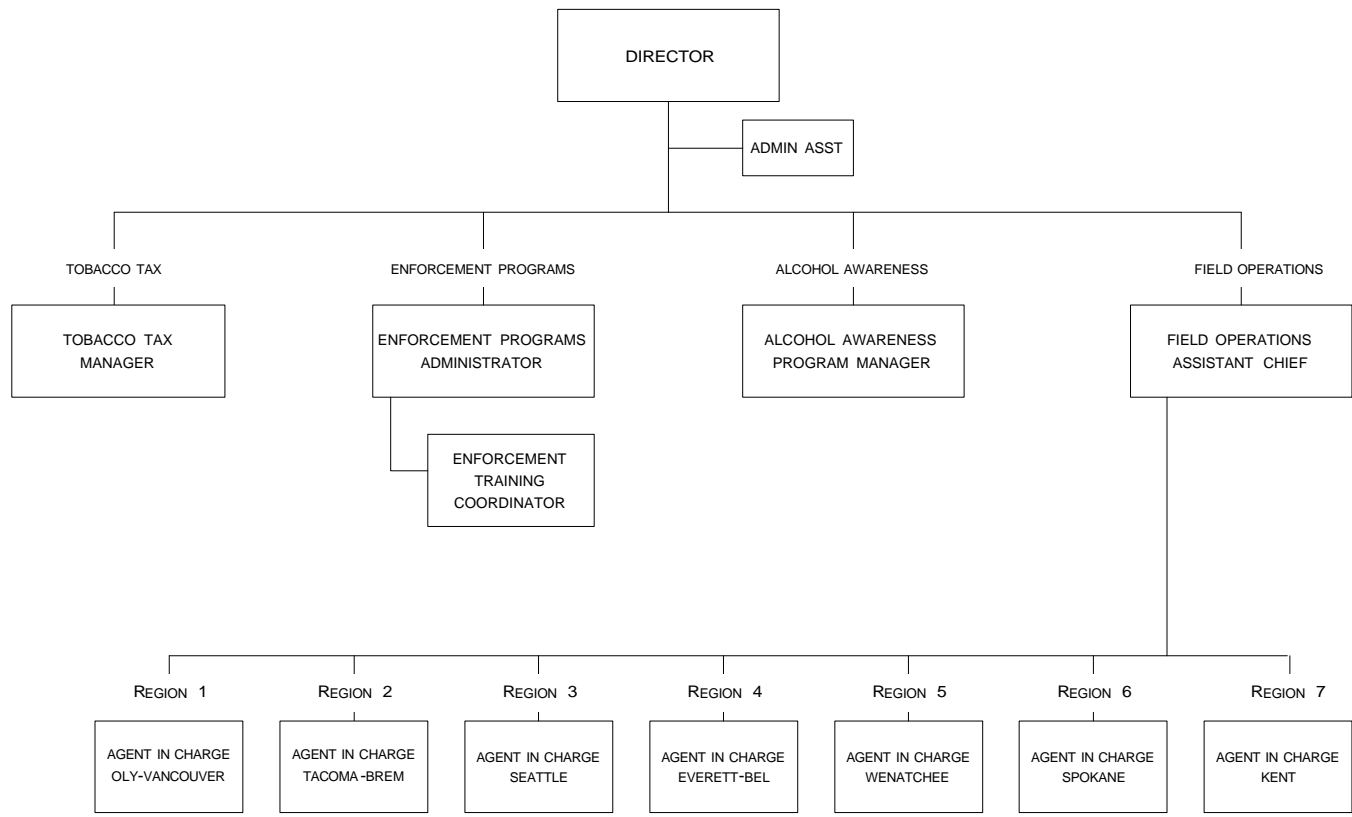
- 2.a Flowchart - Citizen Review Panel workplan and schedule
- 2.b Interviews
- 2.c Research and Documents reviewed

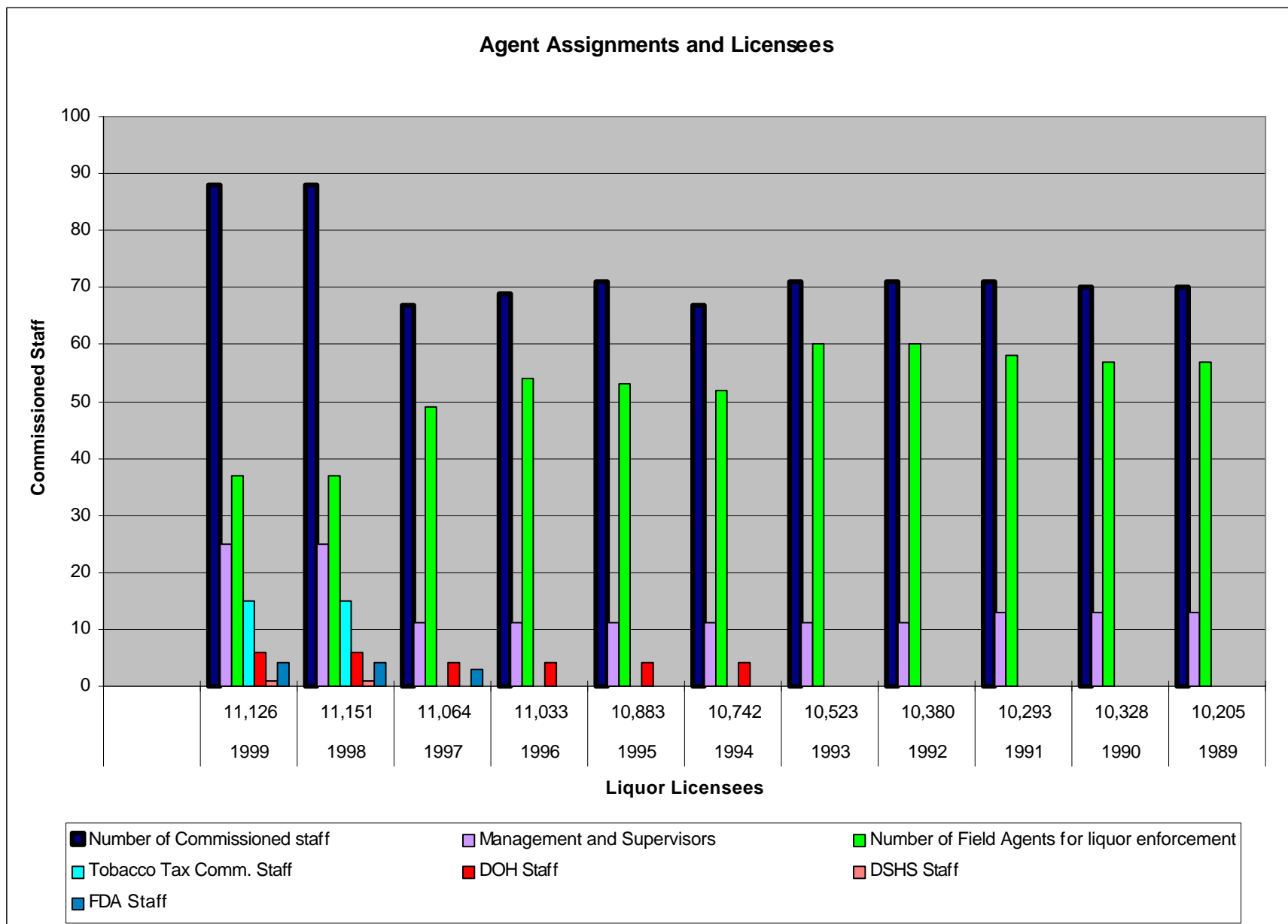




**WASHINGTON STATE LIQUOR CONTROL BOARD**

ENFORCEMENT & EDUCATION DIVISION  
HEADQUARTERS ORGANIZATIONAL CHART

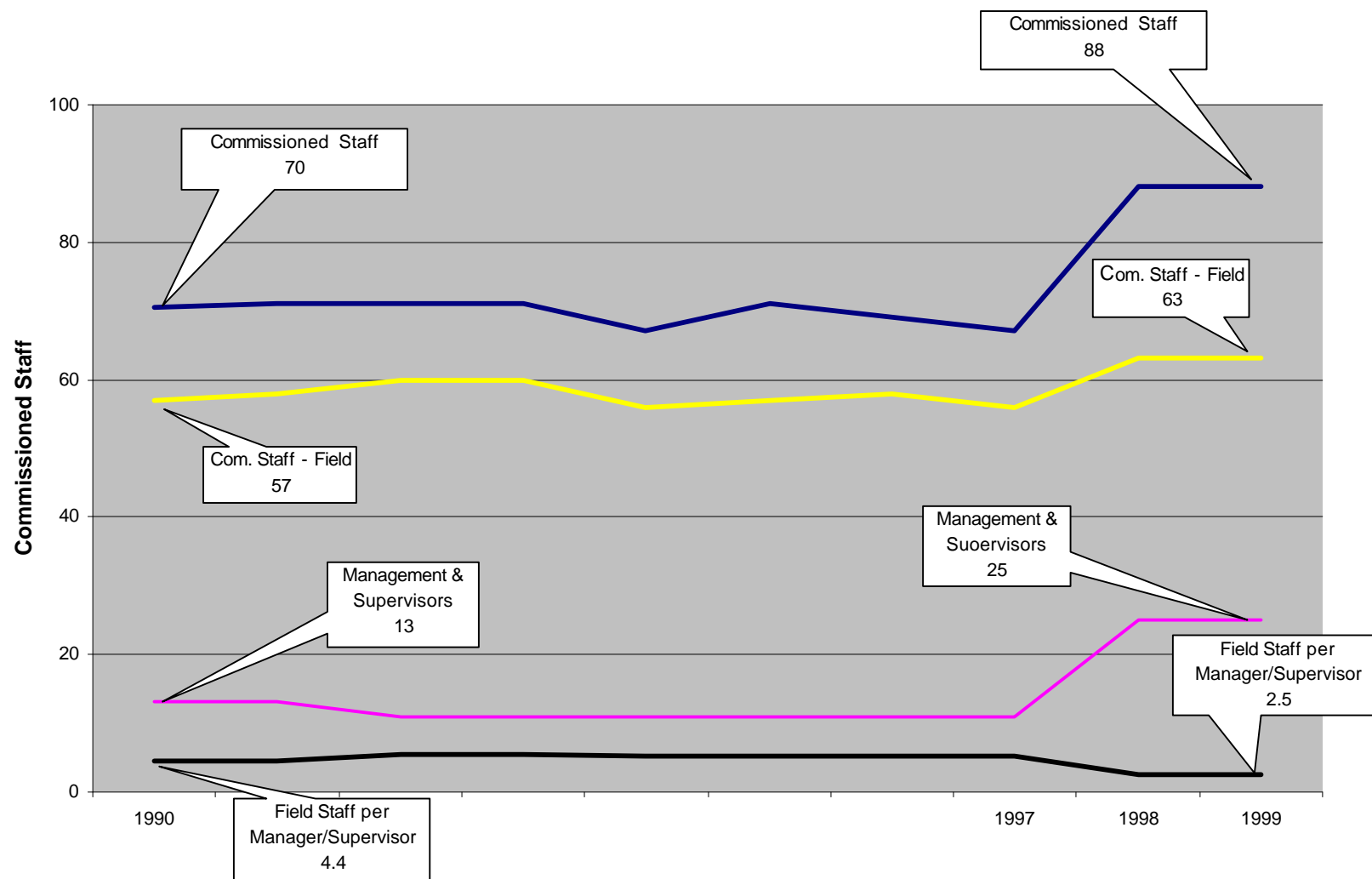




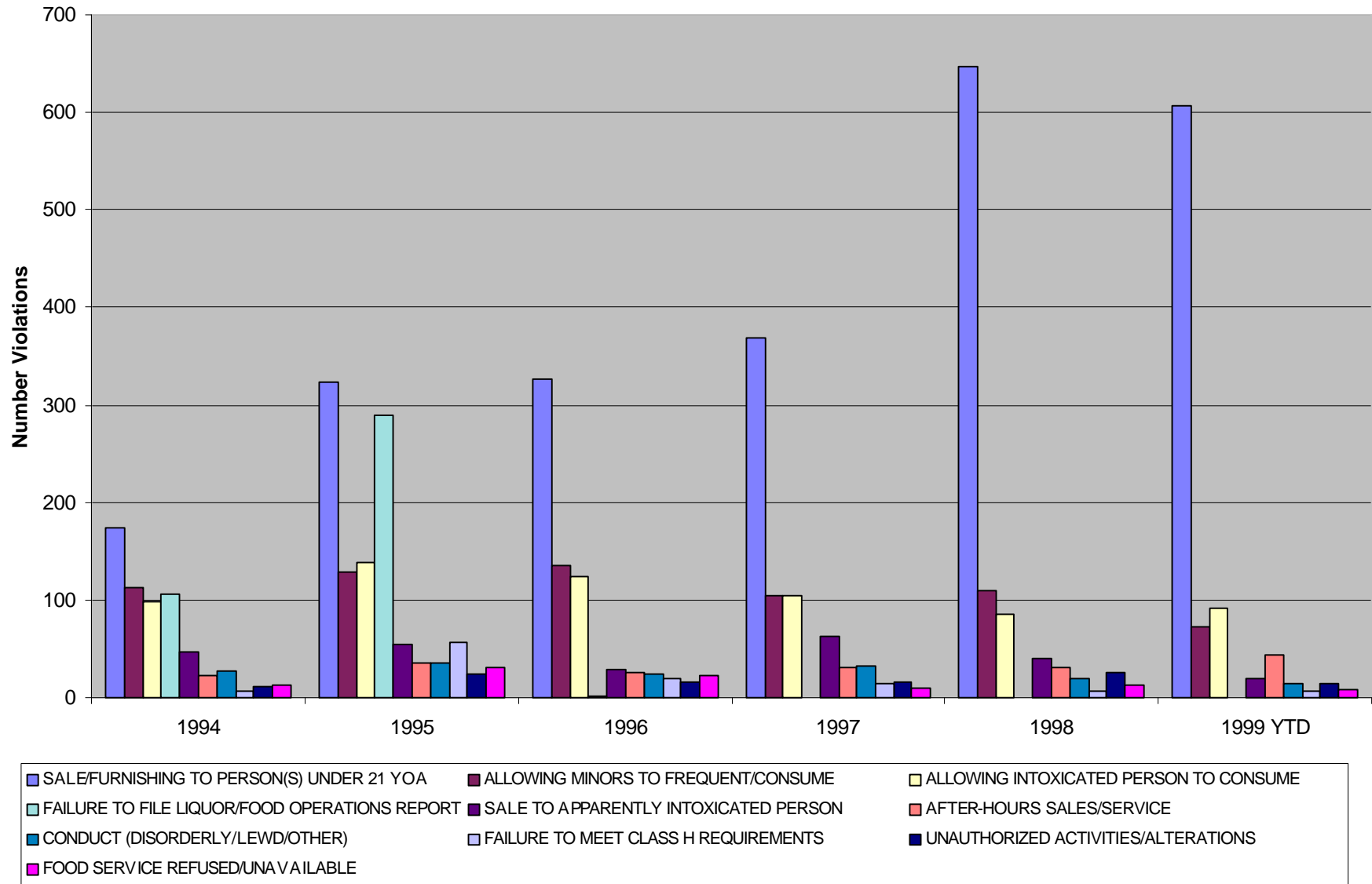


### Management and Supervision 1990 - 1999

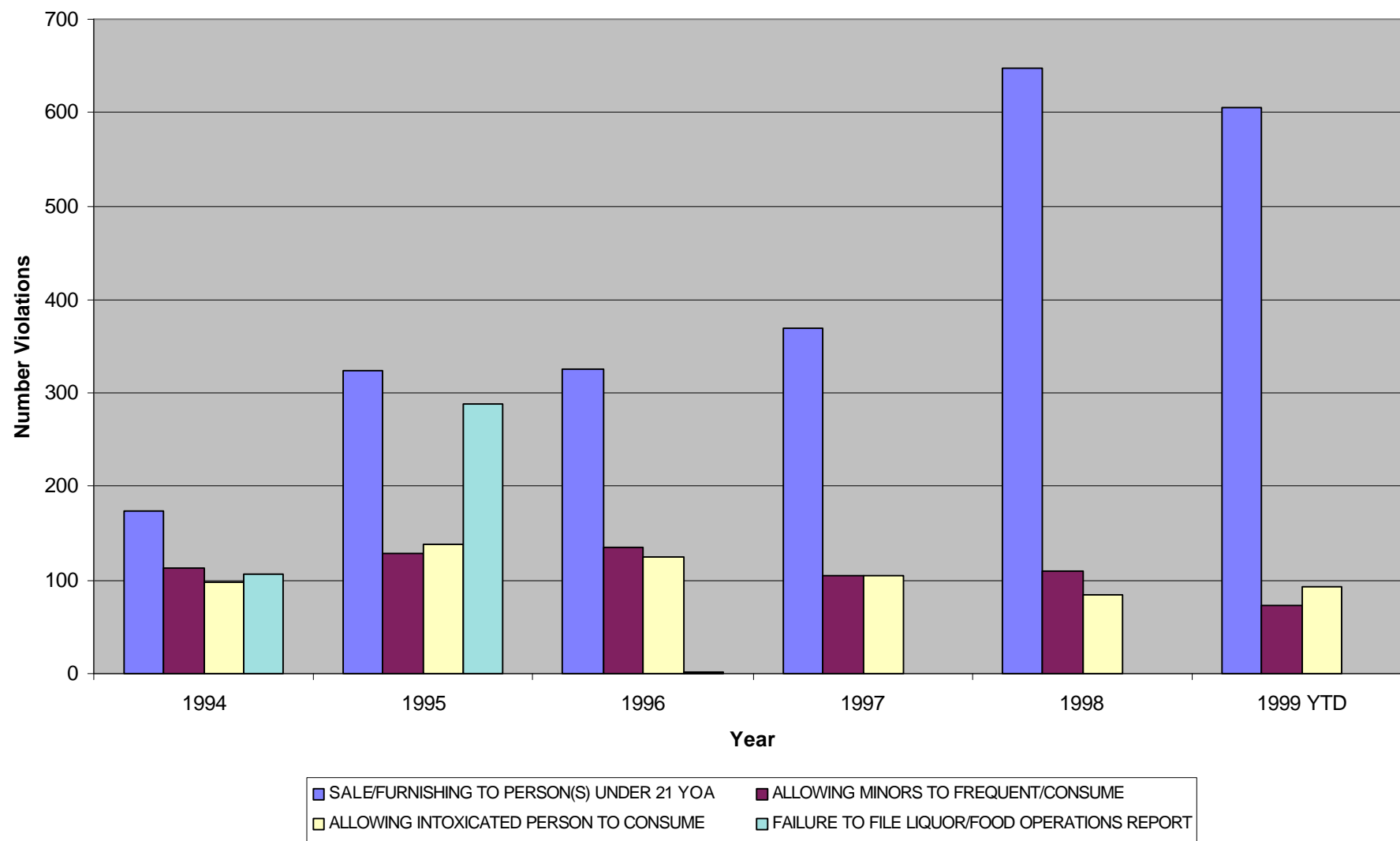
Chart shows trends in ratio of management & supervisors to field staff



### Top 10 Violations 1/1994 - 10/1999

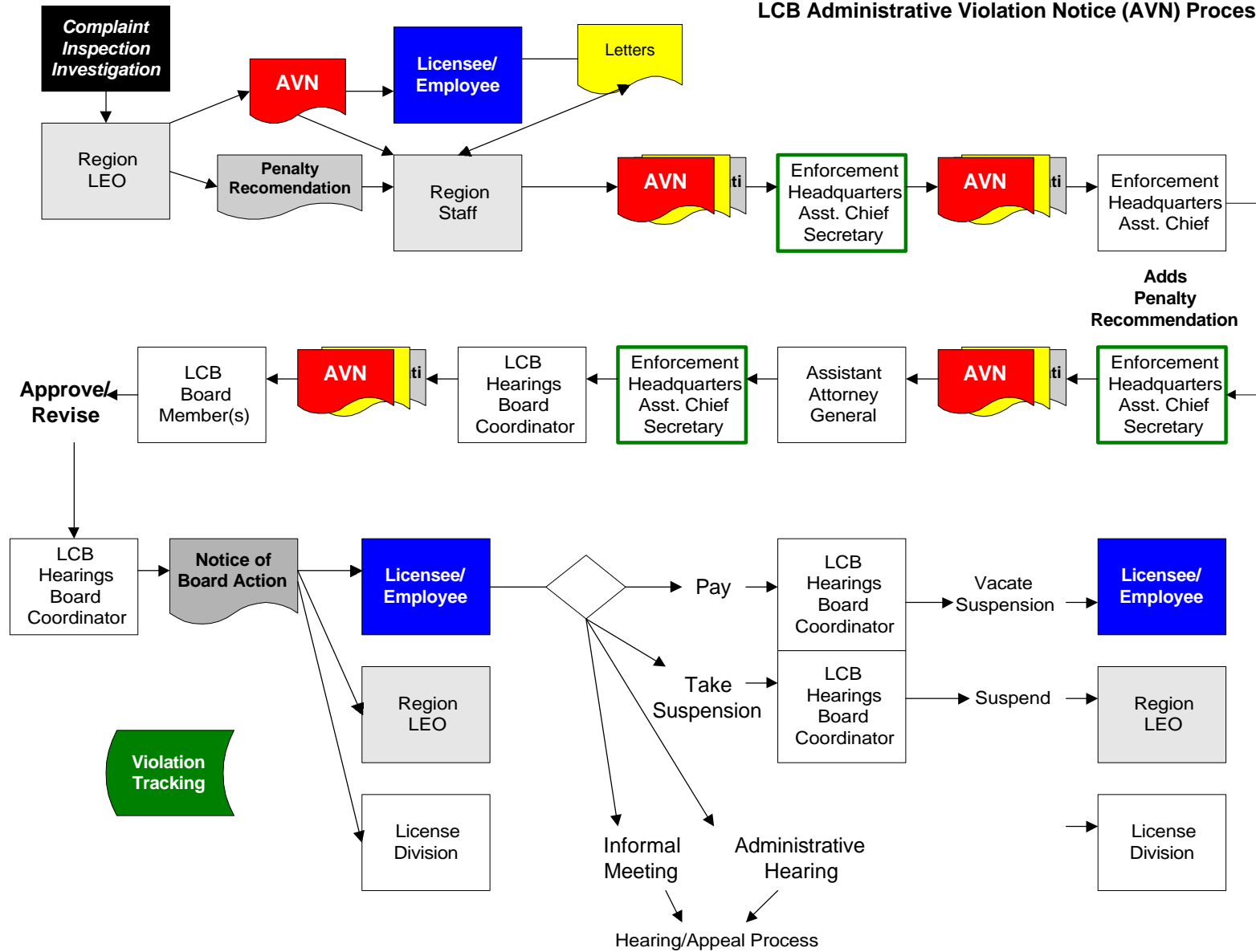


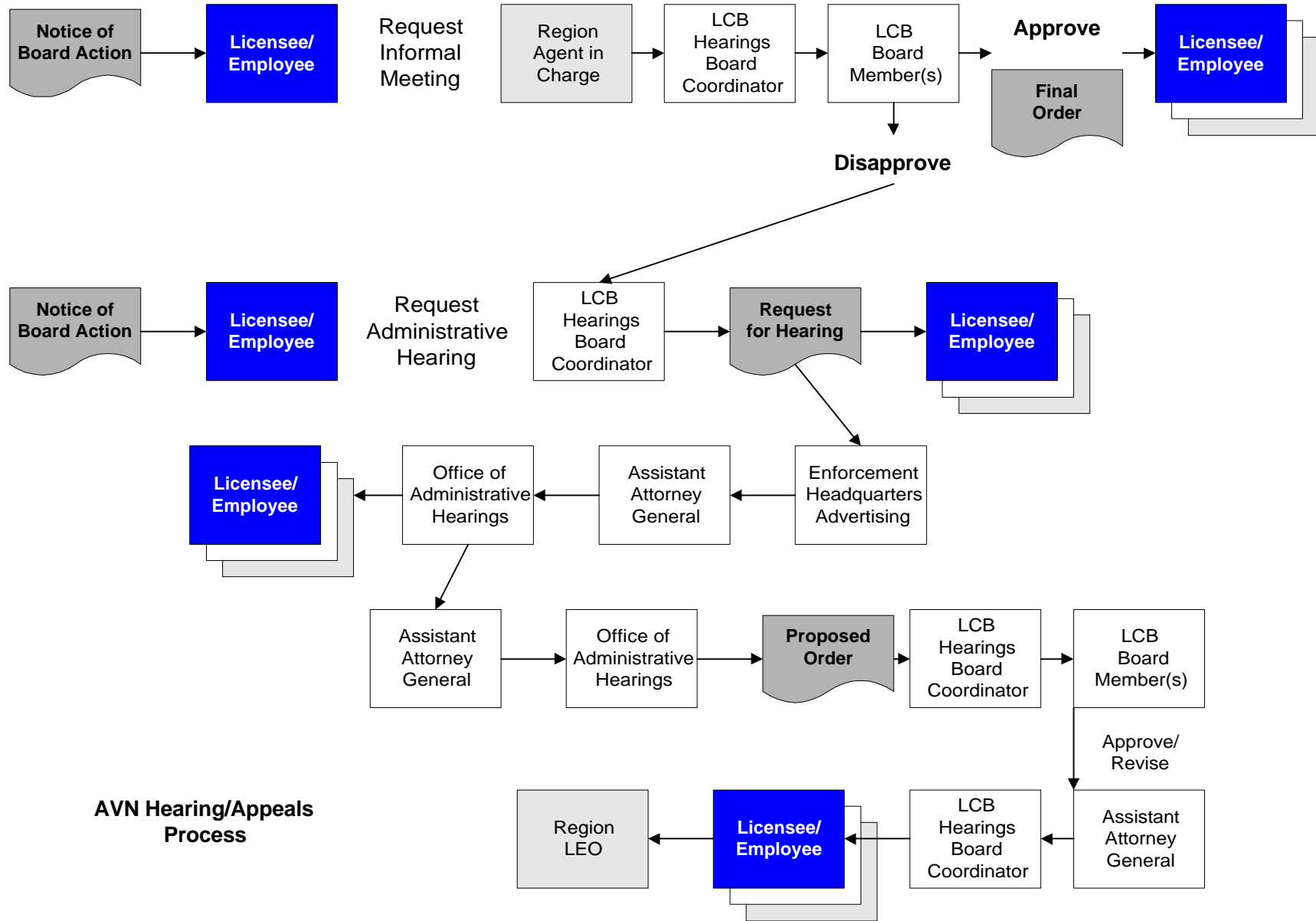
## Top 4 Violations Issued 1/94 - 10/99



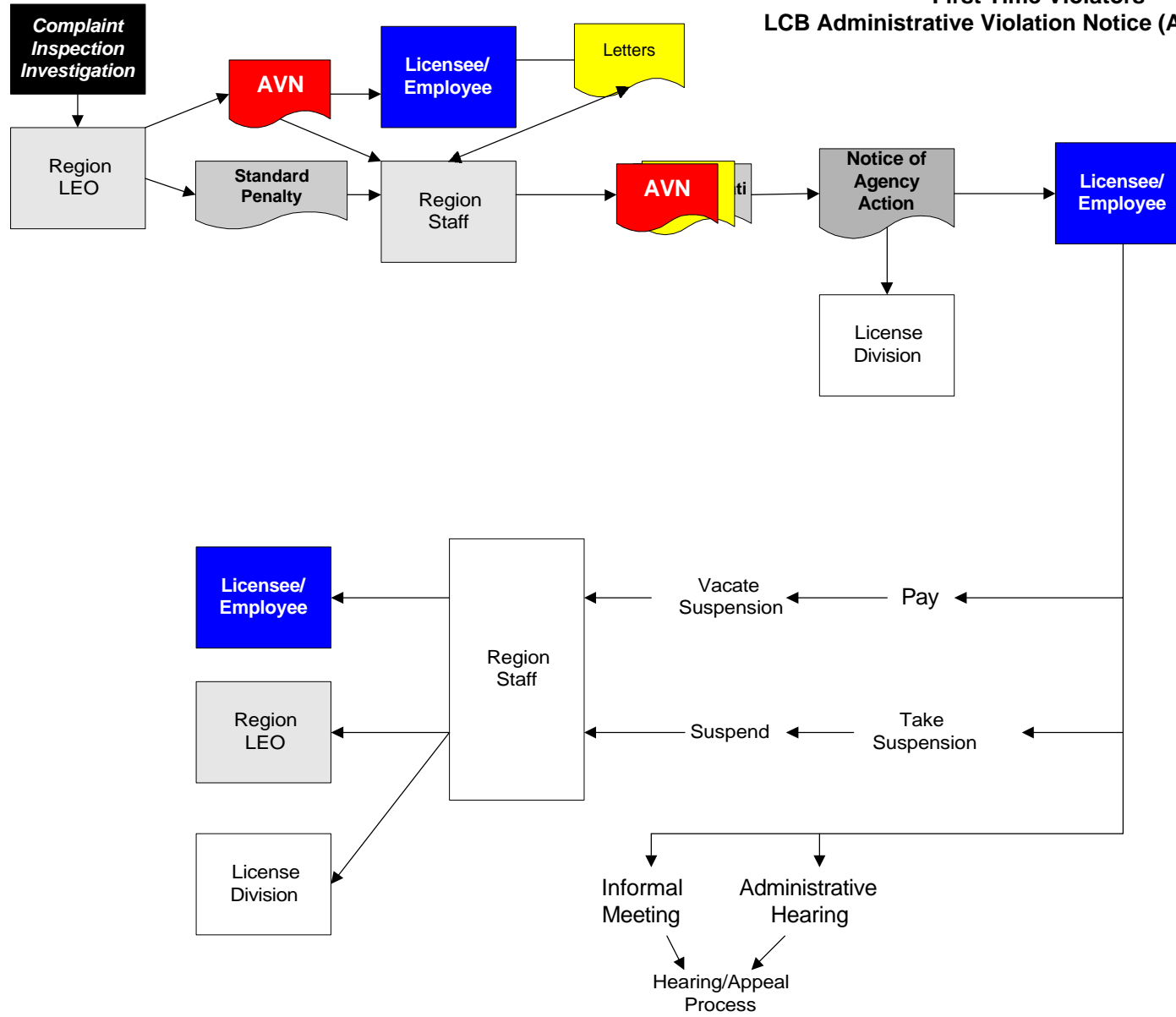


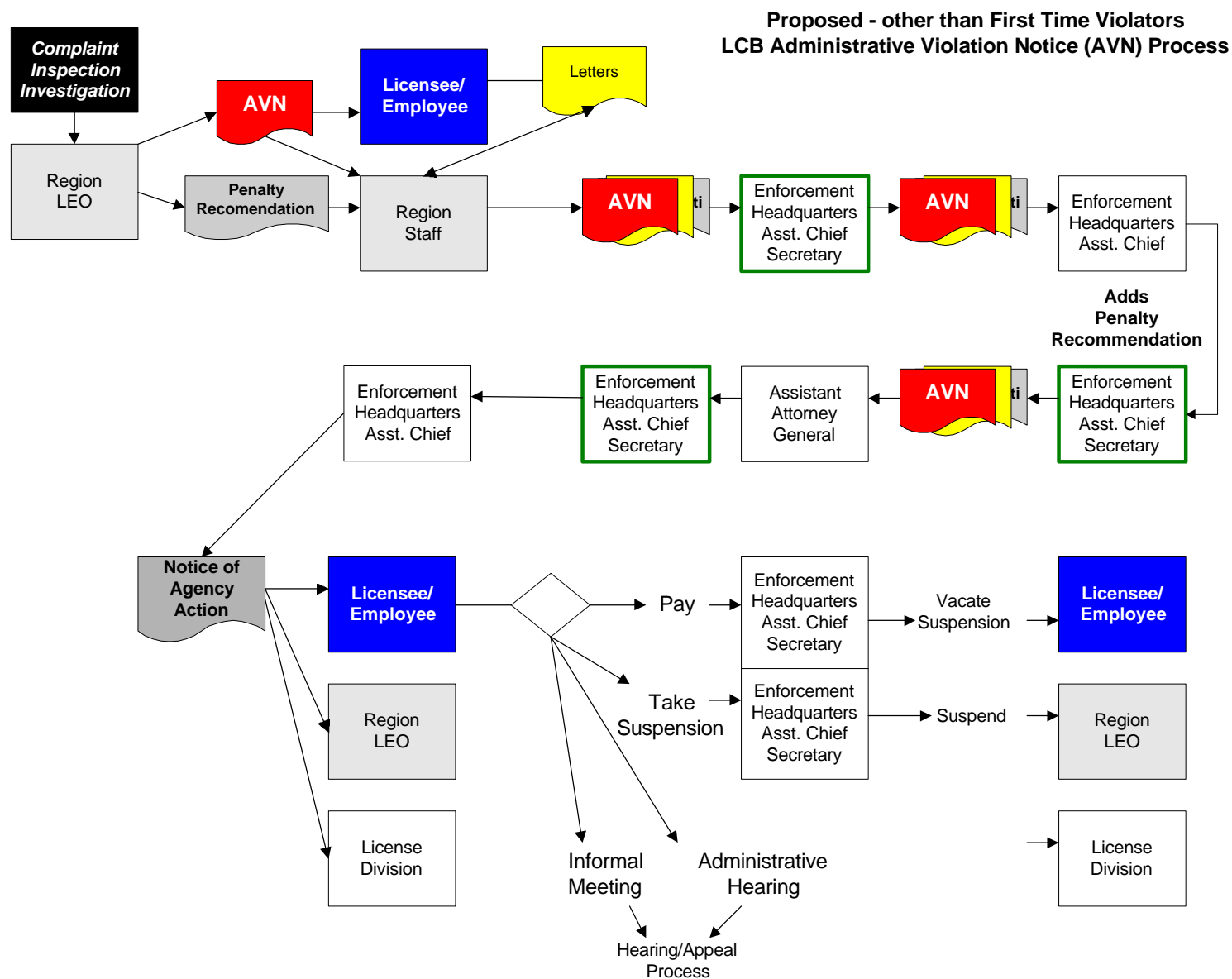
## LCB Administrative Violation Notice (AVN) Process





**First Time Violators  
LCB Administrative Violation Notice (AVN) Process**





## Investigations of Complaints Against Employees - LCB

